

REMARKS

The Applicants request reconsideration of the rejection.

Claims 1 and 3-20 remain pending.

Claims 1 and 3-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Schuster et al., U.S. Patent No. 6,243,846 (Schuster) in view of Chui, U.S. Patent Publication No. 2002/0165978 (Chui). The Applicants traverse as follows.

In response to a recent exchange of positions regarding the propriety of asserting inherency to support various findings made by the Examiner in the rejection, the Applicants respectfully suggest that the Examiner may be misunderstanding the objection to the assertion of such inherency. In the instant Office Action, it appears that the inherency asserted by the Examiner is different from that found objectionable by the Applicants in their recent communications. Specifically, the Applicants continue to assert that it is improper to find inherency in the use of FEC redundancies as set forth in the present claims, and particularly in the storing, retrieving, and applying of FEC redundancies with respect to a correspondence relationship between a transmission partner and an associated FEC redundancy. An important feature of the present invention is that the same FEC redundancy is not applied indiscriminately for every communication respecting various transmission partners, as in the prior art represented by Schuster and Chui. Instead, a stored relationship between a transmission partners and an FEC redundancy is utilized so that the invention applies the FEC redundancy to the data packet to be transmitted in accordance with the relationship stored for the transmission partner to which the data is to be transferred. It is this feature, in

particular, that is neither disclosed nor suggested by Schuster or Chui, or any other reference of record.

The instant rejection, on the other hand, appears to be asserting inherency in the general use of FEC redundancies for packet transmission. Of course, the Applicants do not claim to be the first to apply FEC redundancies with data packet transmission. Indeed, the background section of the present application describes FEC redundancies and their usage in the prior art. Moreover, both Schuster and Chui make use of forward error correction. However, manifestly, neither Schuster nor Chui associates FEC redundancies with the transmission partners in such a way that a stored correspondence relationship is consulted to retrieve and apply a particular FEC redundancy based on the transmission partner of the data packet being transmitted.

Therefore, it is incumbent on the Applicants to assert, and for the Examiner to acknowledge, that the very high standard for asserting inherency must not only be proved, but must be related to the claim language at issue. The Applicants strongly object to the Examiner asserting that “sound reasoning by one skilled in the art need only support inherency.” This is a misstatement of the standard for supporting inherency. If the Examiner persists in this assertion, the Applicants must insist that the Examiner support the assertion by reference to appropriate Patent Office policy or case law.

The Applicants also must respectfully object to the Examiner referring to the online site Wikipedia for any purpose whatsoever. It is the Applicants’ understanding that reference to Wikipedia is against current Patent Office policy inasmuch as Wikipedia is a completely open forum whereby any information, whether true or

false, can be inserted. Thus, Wikipedia is an inappropriate source for supporting any aspect of a rejection, including inherency. Parenthetically, the Applicants note that the Examiner refers to Wikipedia with regard to FEC being accomplished by adding redundancy to transmitted information using a predetermined algorithm, a point which is not at issue.

Regarding the storing, retrieving and applying of FEC redundancies in accordance with an association with particular transmission partners, the independent claims have been amended to emphasize this feature, although the prior language reciting redundancies “cataloged for each transmission partner” is believed to have been clearly recited and free of the prior art. Against the prior language, the Examiner also asserted inherency “because FEC performs redundancy algorithms on packets, which are sent to receiving nodes. Any network device which sends data, such as a server, has tracking means by which to log the receiving nodes with which it communicates.” However, the claims did not recite “tracking means” or logging of “receiving nodes”. Indeed, such prior art tracking means do not hold redundancy information cataloged for transmission partners. More pertinently, neither Schuster nor Chui teach such a means for cataloging these relationships, and no prior art reference developed by the Examiner’s search discloses such tracking means. Therefore, the Applicants strongly assert patentability of the independent claims, both as previously recited and as amended.

In view of the foregoing amendments and remarks, the Applicants request reconsideration of the rejection and allowance of the claims.

To the extent necessary, the Applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing

of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of Mattingly, Stanger, Malur & Brundidge, P.C., Deposit Account No. 50-1417 (referencing attorney docket no. 520.42989X00).

Respectfully submitted,

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